LIBRARY
SUPREME COURT, U. S.

FILED
OCT 29 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

No. 119

October Term, 1969

GEORGE LARIS,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA.

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI

LOUIS M. TARASI, JR.,
JOHN ALAN CONTE,
517 Grant Building,
Pittsburgh, Pa. 15219,
Attorneys for Petitioner.

BATAVIA TIMES, APPELLATE COURT PRINTERS.
EDWARD W. SHANNON, REPRESENTATIVE.
5022 CARLYN DRIVE, PITTSBURGH, PA. 15236
412-881-7463

INDEX.

	PAGE
Petition for Rehearing of Order Denying Certiorari	1
Conclusion	3
Certificate of Counsel	4
Exhibit A—Excerpt from Opinion	4

TABLE OF CASES.

Chimel v. California, 395 U. S. 752	3
People v. Edwards, (9-24-69)	2, 3

CONSTITUTION.

United States, Constitution, Fourth Amendment	2, 3

IN THE

Supreme Court of the United States

No. 119

October Term, 1969

GEORGE LARIS,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA.

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI

Petitioner respectfully requests that this Court grant rehearing of its order dated October 13, 1969, which denied certiorari and that the Court now grant certiorari.

The petition for certiorari previously filed herein presented these questions as stated:

> "1. Do acts of police officers constitute an unreasonable search when based on the vague information of unidentified informants and without a search warrant, they go on private property and observe several cars going up to a building a hundred feet away and the occupants of the cars going inside that building and then the officers surreptitiously stand right up against windows (covered with black paint to prohibit looking in) of that building surrounded by 30 acres of private ground for the purpose of eavesdropping and

for the purpose of seeing gambling activities, if any, inside?

2. Can the tainted information (the fruit of the unreasonable searches) furnished by warrantless surreptitious surveillances (the last of which had taken place a few hours before) be used as the sole probable cause for the issuance of an arrest warrant?

3. Was the gambling paraphernalia seized as an incident of the arrest in this case (whether it was on view or with an arrest warrant) and the testimony based thereon, purged from their primary taint which attached by reason of such evidence being the 'fruit' of warrantless surreptitious surveillances, the last of which had taken place only a few hours before?"

The petition for certiorari discussed the importance of the questions presented by the Pennsylvania Supreme Court's decision in this case and its impact upon the administration of justice in the State courts of Pennsylvania. At that time no decisions of any other State Supreme Courts had reached a contrary decision to that of the Pennsylvania Supreme Court.

At approximately the same date in which this Court denied certiorari to the petitioner herein, the Supreme Court of California decided in *People vs. Edwards,* (9-24-69) that the search without a warrant of the garbage can of the defendant therein was an unreasonable search and seizure under the Fourth Amendment. The California Supreme Court recognized that the Fourth Amendment protects a reasonable expectation of privacy and this even extends to one's garbage can. The petitioner does not now presently have a complete copy of this Opinion and one will be provided to the Court just as soon as he obtains it. However, a synopsis and excerpt from such Opinion is here attached and marked Exhibit "A". It is petitioner's contention that this case is in all material as-

pects comparable to the present case and that it reaches an exactly opposite result. The basic problem raised by this, the *Edwards* case and the instant case is that the Supreme Court of California interpreting the Fourth Amendment of the United States Constitution reaches a direct opposite result of the Supreme Court of the Commonwealth of Pennsylvania. Furthermore, neither one of these cases has resolved the basic problem of whether the *Chimel vs. California,* 395 U. S. 752 case is retroactive in its application or further whether or not even without consideration of the application of the *Chimel* case, there is a direct conflict between two States in regard to the interpretation of the Fourth Amendment of the United States Constitution.

Since there now exists a clear and express conflict of decisions among the State Courts on an important question of federal law affecting many people in different parts of the country, compelling reasons are evident why the question presented should be reviewed and definitively determined by this Court.

Conclusion

For the reasons set forth in this petition for rehearing as well as in the petition for certiorari previously filed, rehearing and certiorari should now be granted.

Respectfully submitted,

LOUIS M. TARASI, JR.

Certificate of Counsel

Pursuant to Rule 58, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in paragraph two (2) of Rule 58.

LOUIS M. TARASI, JR.

Exhibit A

6 CrL 2024 10-8-69

CALIFORNIA TRASH CAN PROTECTED BY FOURTH AMENDMENT

California Supreme Court cites owner's "reasonable expectations" that the privacy of his refuse will be respected.

The right of privacy is the main reason for the California Supreme Court's holding unlawful under the Fourth Amendment a highly successful warrantless search of a careless marijuana possessor's trash. "Reasonable expectation of privacy," the court says, is the true criterion for defining the sort of "security in one's house and possessions" that the Fourth Amendment protects.

The trash can is an "adjunct to the domestic economy," and placing something in it is not an abandonment except as to authorized trash men. The court can think of many reasons why persons would not want their "telltale refuse" to be examined by neighbors or others—at least not until it "loses its identity and meaning by becoming part of a large conglomeration of trash elsewhere."

This holding is applied to a trash can that was within a few feet of the defendant's back door and required a trespass for inspection. Common trash piles and those at some distance beyond the house, the court indicates, might be another matter.

Looking to the Chimel v. California, 395 U. S. 752, 5 CrL 3131, questions that might arise if some marijuana found in the defendant's house upon his arrest is proved on retrial not to be "poisonous fruit" of the midden-sifting, a majority of the court declares that Chimel is so nonretroactive that it will not even apply to cases pending on appeal as of Chimel's announcement. However, Justice Peters opposes this view. Chimel so needs explication, he says, that no court should allow itself to wait so long before plunging into construction of it: to forgo the opportunity, he says, is to condone unsavory police practices. (*People v. Edwards, 9/24/69*).

Digest of Opinion: [*Text*] Shortly after 9 p.m. on January 13, 1967 [detective] Hern contacted Mr. Hansen, who lived next door to defendants, and Hansen reported that about a week before he had seen on defendants' back porch a large plastic bag containing described packages, one of which was torn and contained a lark green vegetable substance that appeared similar to alfalfa but did not smell like alfalfa and had a "small funny type seed." [*End Text*]

Two detectives, without a warrant, went to the defendant's house and entered his back yard.

[*Text*] Inside one of the trash cans they found, among other things, a bag which contained marijuana—"possibly enough to roll a couple of cigarettes or more" and which had "Other stuff on top of it."

Hern then took the marijuana back to his office to examine it more carefully. [*End Text*]

They staked out the house until Edwards returned and entered. They then knocked at the door and, refused entrance, broke in, arrested Edwards and his wife, and without a warrant or consent successfully searched every room for marijuana.

[*Text*] The Attorney General argues that the search was valid because, he asserts, the premises around a house are not protected by the Fourth Amendment * * *. [*End Text*]

True, "open fields" have been held outside the Fourth Amendment's protection.

[*Text*] The decisions of the lower federal courts, however, contain conflicting statements as to whether the ground area of the curtilage is protected by the Fourth Amendment * * *. [*End Text*]

Some have declared that the Fourth Amendment's protection has never been restricted to the interior of the house, but has extended to open areas immediately adjacent.

[*Text*] As we have seen, the trash can was within a few feet of the back door of defendant's home and required trespass for its inspection. It was an adjunct to the domestic economy. * * * Placing the marijuana in the trash can, so situated and used, was not an abandonment unless as to persons authorized to remove the receptacle's contents, such as trashmen. (See Work v. United States, at pp. 662-663.) The marijuana itself was not visible without "rummaging" in the receptacle. So far as appears defendants alone resided at the house. In the light of the combined facts and circumstances it appears that defendants exhibited an expectation of privacy, and we be-

lieve that expectation was reasonable under the circumstances of the case. We can readily ascribe many reasons why residents would not want their castaway clothing, letters, medicine bottles or other telltale refuse and trash to be examined by neighbors or others, at least not until the trash has lost its identity and meaning by becoming part of a large conglomeration of trash elsewhere. Half truths leading to rumor and gossip may readily flow from an attempt to "read" the contents of another's trash. [*End Text*]

It is clear, too, that the intrusion here was unreasonable, for warrantless searches are per se unreasonable, subject to a few specifically defined exceptions, and none of these exceptions applies to the trash search here.

[*Text*] People v. Bly, 191 Cal. App. 2d 352, 354, is disapproved to the extent that it is inconsistent with the views expressed herein. [*End Text*]

But it does not necessarily follow that the evidence obtained after arrest is "fruit" of the prior illegal search. Evidence on retrial may establish its independence, and if so the next question will be the application of Chimel v. California, 395 U. S. 752, 5 CrL 3131, to the searches. The Attorney General correctly concedes here that the search violated Chimel, but we hold, especially upon "prior reliance" grounds, that Chimel does not apply retroactively.

[*Text*] An additional question that may arise upon retrial is whether, as argued by defendants on appeal, the arrests were a pretext for the subsequent search. Defendants rely upon the settled rule that when it appears that the search and not the arrest was the real object of the officers in entering upon the premises and that the arrest was a pretext for or at most an incident of the search, the search is not reasonable within the meaning of the

Constitution. (See People v. Haven, 59 Cal. 2d 713, 719.) The recited facts, however, do not show that this is such a case. [*End Text*]—Burke, J.

Concurrence and Dissent: [*Text*] I concur in the portion of the majority decision holding that the search of the trash can was unlawful. I dissent, however, from the portion of the majority opinion that holds that the rule of Chimel v. California * * * applies only to searches which occurred subsequent to June 23, 1969, the date of those decisions.

In my view the rule announced in Chimel applies to all pending cases. To hold that its rulings are purely prospective is an arrogant abuse of judicial power and a blatant exercise of legislative power. In prior opinions, I have stated in detail why this practice of rendering decisions purely prospective is contrary to the judicial function * * * and I will not further repeat those general views herein, but wil linstead set forth the specific reasons why the fair and effective administration of justice requires that the rules adopted in Chimel be applied to pending cases. * * *

The majority's arguments, to the extent that they are entitled to any weight, constitute a direct attack on the exclusionary rule itself rather than furnishing a basis to refuse to apply Chimel to pending cases.

No matter how we try to characterize it, we are in effect condoning unlawful police practices and comprising our own dignity as a guardian of justice and liberty by so doing.

[*Text*] In these days, when so many people have taken to the streets in attack upon our institutions and in defiance of the fundamental concepts of ordered liberty, it is

more than ever necessary that a court out of regard for its own dignity as an agency of justice and custodian of liberty strive to maintain that dignity, vindicate constitutional rights, and encourage respect for a system of justice which does not sacrifice constitutional rights for expediency. * * *

Similarly, to refuse to expeditiously determine which searches are lawful and unlawful under Chimel will also frustrate to a substantial extent either the objective of encouraging officers to secure evidence by lawful rather than unlawful means or the objective of deterring unlawful searches, or both, because the applicability of Chimel in a variety of the most common situations is unclear. [*End Text*]

Chimel leaves many questions, and during the several years that searches conducted after June 23, 1969 take to reach us, policemen without guidance may well interpret Chimel to legalize many unlawful searches.

[*Text*] The other two criteria relied upon by the majority, burden on the administration of justice and reliance of law enforcement officials, do not warrant repudiation of the policies underlying the exclusionary rule and of the well settled principle that judicial decisions unlike legislative acts should be applied to pending appeals. * * *

I agree with the view expressed by Justice Harlan, the only member of the United States Supreme Court who has taken a position on the issue, that Chimel should apply to pending appeals. [*End Text*]—Peters, J.

(People v. Edwards; Calif. Sup. Ct., 9/24/69)